

**PUBLIC NOTICES  
VIRGINIA COASTAL MANAGEMENT PROGRAM**

**STATE AIR POLLUTION CONTROL BOARD REGULATIONS FOR  
THE CONTROL AND ABATEMENT OF AIR POLLUTION  
Clean Air Act Incorporation**

**&**

**AIR POLLUTION CONTROL LAW  
Clean Air Act Incorporation**

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Pursuant to Section 307(f) of the Coastal Zone Management Act (CZMA), 16 U.S.C. §1456 (f), and the Program Change Guidance issued in July 1996 by the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA), the Commonwealth of Virginia gives notice of its incorporation into the Virginia Coastal Management Program (CMP) of regulations for the control and abatement of air pollution promulgated by the State Air Pollution Control Board of the Commonwealth of Virginia pursuant to the federal Clean Air Act (CAA). These regulations were adopted by the State Air Pollution Control Board under its authority to control and abate air pollution, as previously incorporated into Virginia's Coastal Management Program upon its approval by NOAA in 1986.

Under 42 U.S.C. § 7410, the CAA authorizes states to develop a state implementation plan (SIP) for national primary and secondary ambient air quality standards (NAAQS). In 1973, EPA approved Virginia's SIP. Virginia's SIP includes regulations that demonstrate how primary and secondary national ambient air quality standards will be achieved, maintained, and enforced within each air quality control region in the state. The SIP also contains regulations for stationary sources, new and modified source permits, motor vehicle emissions control, air pollution episode prevention, and conformity. In 1975, EPA delegated authority to the State Air Pollution Control Board to administer the New Source Performance Standards (NSPS) Program pursuant to 42 U.S.C. § 7411. Subsequently, EPA delegated the authority to administer National Emission Standards for Sources of Hazardous Air Pollutants (NESHAPs) Program pursuant to 42 U.S.C. § 7412. In 1998, EPA delegated authority to Virginia to set Maximum Achievable Control Technology Emission Standards (MACTS) pursuant to 42 U.S.C. § 7412. In the following year, EPA approved Virginia's National Low Emissions Vehicle (NLEV) Program—a program that Virginia opted to adopt pursuant to § 209 of CAA. In 2001, EPA approved Virginia's Operating Permit Program pursuant to Title V of the CAA. The Operating Permit Program approval is a full approval that encompasses the Acid Rain Deposition Control Program.

Virginia has the authority to administer and enforce all but one of its designated pollutant plan regulatory programs developed pursuant to 42 U.S.C. §7429. EPA approved Virginia's designated pollutant plans for the following types of solid waste incineration units: Hospital/Medical/Infectious Waste Incinerators, approved in 2004; Commercial/Industrial Solid Waste Incinerators, approved in 2004; Small Municipal Waste Combustors, approved in 2005; Large Municipal Waste Combustors, approved in 2004. The designated pollutant plan for municipal solid waste landfills (see Article 43 of 9 VAC 5 Chapter 40) has not yet been approved.

Virginia's state-only regulatory programs are the Toxic Pollutant Control Program, Medical Waste Incinerator Emissions Control Program, Odor Emissions Control Program, and the Open Burning Emissions Control Program.

CZMA § 307(f) states that the requirements established by a state or local government pursuant to the CAA shall be incorporated into any program developed pursuant to the CZMA. Pursuant to Section 307 (f) of the CZMA, the Commonwealth of Virginia now submits for incorporation into the State CMP the following current regulations for the control and abatement of air pollution established pursuant to the CAA. For convenience, we summarize each chapter within the regulations being submitted for incorporation.

<b>Chapter</b>	<b>Summary</b>
9 VAC 5 Chapter 10 - General Definitions	Defines approximately 90 terms for the purpose of applying the regulations.
9 VAC 5 Chapter 20 - General Provisions	Provides for individual source fuel variances; prohibits circumvention through concealment or dilution; provides for registration of sources and approval of control programs; details shutdown procedures in the event of equipment maintenance, malfunction, or permanent shutdown; and geographically defines emissions areas, including nonattainment areas and air quality maintenance areas. The chapter also enumerates documents incorporated by reference throughout the air pollution control and abatement regulations.
9 VAC 5 Chapter 30 - Ambient Air Quality Standards	Incorporates NAAQS established by Section 109 of the CAA. Describes procedures for reporting air quality measurements; defines air quality standards for listed pollutants; and requires revision of the air quality standards as new information becomes available.
9 VAC 5 Chapter 40 - Existing Stationary Sources	Sets emissions standards and terms of compliance for existing sources; lists detailed standards by emission type, type of facility, or emissions-generating process. The chapter includes regulations for designated pollutants.
9 VAC 5 Chapter 50 - New and Modified Stationary Sources	Sets emissions standards and terms of compliance for new and modified sources; defines standards by emission type, type of facility, or emissions-generating process.
9 VAC 5 Chapter 60 - Hazardous Air Pollutant Sources	Outlines the approval process and emissions standards for discharging hazardous air pollutants from existing, new and modified sources. Addresses the application process for case-by-case MACT determinations.
9 VAC 5 Chapter 70 - Air Pollution Episode Prevention	Sets the criteria justifying the proclamation of a watch, alert, warning or emergency stage based on the accumulation of air pollutants threatening public health in nonattainment areas. Requires source

	owners to prepare and implement emission reduction plans for reducing emissions during such periods.
9 VAC 5 Chapter 80 - Permits for Stationary Sources	Sets forth Title V operations permitting and compliance procedures for stationary sources, detailing the permitting process for sources in designated emissions areas. This includes prevention of significant deterioration (PSD) program requirements set forth by the CAA, and acid rain permitting information.
9 VAC 5 Chapter 91 - Motor Vehicle Inspection & Maintenance Program for Northern Virginia	Sets forth emissions standards for motor vehicle air pollution, permitting, certification and operating restrictions on vehicle emissions stations for licensing and certification of emissions inspectors; and enumerates enforcement procedures for violation of vehicle emission standards.
9 VAC 5 Chapter 140 - Emissions Trading	Details the budget trading, annual trading and ozone season trading programs for nitrogen oxides. Provides the annual trading program for sulfur dioxide and the mercury budget trading program.
9 VAC 5 Chapter 150 - Regulation for Transportation Conformity	Describes the criteria and procedures for making conformity determinations with regard to transportation plans.
9 VAC 5 Chapter 151 - Regulation for Transportation Conformity	Identifies federal regulations incorporated by reference into this chapter, and defines procedures for inter-agency consultation with regard to transportation conformity.
9 VAC 5 Chapter 160 - Regulations for General Conformity	Stipulates that a federal agency must determine that a federal action conforms to the applicable implementation plan based on the latest planning assumptions and that the agency's conformity analysis shall have a notice and comment process. Provides for the lapse of conformity status, and describes the requirements for implementation of mitigation measures for the purposes of conformity.
9 VAC Chapter 170 - Regulation for General Administration	Provides for hearings and proceedings, board action, establishment of regulations and orders, public participation, enforcement, and delegation of authority by the board to the director.
9 VAC Chapter 190 - Variance for Merck	Establishes site-wide emissions caps for

Stonewall Plant	Merck Stonewall Plant, lists provisions of the SAPCB regulations satisfied by compliance with this chapter, and establishes that the provisions are both transferable to a new owner and applicable in the event of a facility name change.
9 VAC Chapter 200 - National Low Emission Vehicle Program	Establishes that—for the duration of Virginia’s participation in the National LEV, covered manufacturers may comply with the National LEV or equally stringent standards in lieu of compliance with any program adopted by the Board. Contains provision covering transition into the Virginia program for any manufacturer that opts out of the National LEV program.
9 VAC Chapter 210 - Regulation for Dispute Resolution	Establishes that dispute resolution may be used in disputes which reveal significant issues of disagreement; and the outcome may be considered in issuing permits, or promulgating, amending or appealing regulations. Contains cost, attendance, public participation, enforcement, and confidentiality provisions.
9 VAC Chapter 220 - Variance for Rocket Motor Test Operations at ARC Orange County Facility	Establishes a site-wide particulate matter emissions cap; identifies visible emissions standards that do not apply to the test operations; describes compliance procedures; and establishes that the provisions are both transferable to a new owner and applicable in the event of a facility name change.
9 VAC Chapter 221 - Variance for Rocket Motor Test Operations at ARC Gainesville Facility	Establishes a site-wide particulate matter emissions cap; identifies visible emissions standards that do not apply to test operations; describes compliance procedures; and establishes that the provisions are both transferable to a new owner and applicable in the event of a facility name change.
9 VAC Chapter 230 - Variance for International Paper Franklin Paper Mill	Establishes a site-wide emissions caps for the International Paper Franklin Paper Mill; lists provisions of the SAPCB regulations satisfied by compliance with this chapter and the FESOP, describes procedures for FESOP issuance and amendments; and establishes that the provisions are both

	transferable to a new owner and applicable in the event of a facility name change.
9 VAC Chapter 240 - Variance for Open Burning	Excludes the County of Gloucester, for the purposes of applying the seasonal restrictions on open burning or burning using special incineration devices in 9 VAC 5-40-5630 A8 and 10, from the Hampton Roads Volatile Organic compound Emission Control Area in 9 VAC 5-20-206.
9 VAC Chapter 500 - Exclusionary General Permit for Title V Permit	Sets out general permit exemption requirement for all major sources that are emitting regulated air pollutants provided they maintain their annual emissions at a specified level that is less than the potential to emit applicability thresholds for the federal operating permit program. Establishes that a general permit is not a defense for violation of this chapter and prohibits circumvention. Provides conditions and terms a source must meet in order for DEQ to issue a general permit. Enumerates compliance and enforcement requirements.
9 VAC Chapter 510 - Nonmetallic Mineral General Permit	Provides requirement for nonmetallic mineral processing facilities to construct, modify, relocate and operate under a general permit. Establishes that a general permit is not a defense for violation of this chapter and prohibits circumvention.

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CZMA § 307(f) states that requirements established by a state or local government pursuant to the federal Clean Air Act (CAA) "shall be incorporated" into any program developed pursuant to the CZMA. In 1986, NOAA approved Virginia's Air Pollution Control Program as a part of Virginia's original Coastal Resource Management Program, including the Virginia Air Pollution Control Board's authority to "issue regulations covering air quality throughout Virginia as indicated in the Virginia Code §10-17.18." *See Virginia Coastal Resources Management Program, Final Environmental Impact Statement* p. III-16 (1985). At the time Virginia's CMP was approved, the Air Pollution Control Board was located in Va. Code § 10-17.1 *et seq.* In 1988, Title 10 was recodified to Va. Code 10.1-1300 *et seq.* The Commonwealth of Virginia now submits for incorporation into the State CMP the current provisions of Title 10.1, Chapter 13, established pursuant to the CAA.

These provisions address the Air Pollution Control Board's power and duties to promulgate air regulations and administer Virginia's State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. "The Department of Environmental Quality implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the national Ambient Air Quality Standards. The Program is administered by the State Air Pollution Control Board (Code of Virginia §10-1.1300)." <sup>1</sup>

The provisions being incorporated address the Board's authority to: 1) promulgate and enforce regulations governing air quality standards, 2) develop and implement programs designed to ensure that Virginia meets national air quality standards, 3) monitor Virginia's air quality, 4) investigate complaints and violations of Virginia's air quality laws, 5) establish and prescribe penalties, and 6) achieve and maintain air quality to protect human health, welfare, and safety. The provisions also address the powers and duties of the Board's Executive Director; the Board's meeting requirements; and the Air Pollution Permit Program Fund. For convenience, we summarize each provision in the following table.

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<sup>1</sup> Virginia Department of Environmental Quality, Virginia CZM Program Laws and Enforceable Policies, at <http://www.deq.state.va.us/coastal/lawspols.html>.



<b>Title 10.1, Chapter 13</b>	<b>Summary</b>
10.0-1300 Definitions	Defines terms used in the statute.
10.1-1301 State Air Pollution Control Board; membership; terms; vacancies	Requires that the Board be composed of 5 members, each of which is appointed by the Governor for four-year terms.
10.1-1302 Qualifications of members of the Board	Outlines the requisite qualifications of a Board member.
10.1-1303 Chairman of the Board; Executive Director; cooperation of state agencies	Requires the Board to elect a chairman and requires the Governor to elect an Executive Director of the Board.
10.1-1304 Meetings of Board; quorum	Requires the Board to meet at least one time every three months. The provision also requires three members for a quorum.
10.1-1305 Records of proceedings of Board	Requires the Board to keep a complete record of meeting proceedings. Records must be available for public inspection.
10.1-1306 Inspections, investigations, etc	Provides the Board authority to carry out investigations and inspections to achieve and maintain air quality levels in Virginia.
10.1-1307 Further powers and duties of Board	Provides the Board authority to regulate internal affairs; initiate and supervise research programs on the hazards of air pollution; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth. The provision also provides the Board authority to adopt by regulation emissions standards controlling the release of air pollutants from motor vehicles, as provided in §46.2-1176 <i>et seq.</i>
10.1-1307.01 Further duties of Board; localities particularly affected	Requires the Board, prior to promulgating a regulation, granting a variance, or issuing a permit for a new source or modification of an existing source, publish, or require the applicant to publish, a notice in the local paper, mail the notice to enumerated state, and accept comments for a prescribed period of time.
10.1-1307.1 Department continued; appointment of Director	Provides for the continuation of the Department of Air Pollution Control. Sets forth the Department's power and duties.
10.1-1307.2 Powers and duties of the Executive Director	Sets forth the Executive Director's powers.
10.1-1307.3 Executive Director to enforce laws	Provides the Executive Director the power to investigate Chapter 13 violations and pursue enforcement actions.

10.1-1308 Regulations	Provides the Board authority to promulgate regulations, including emergency regulations, to abate, control, and prohibit air pollution in Virginia. Prohibits regulations on specific actions.
10.1-1309 Issuance of special orders; civil penalties	Provides the Board power to issue special orders to polluters to discontinue actions contributing to air pollution. The Board may also issue special orders to permit violators. The provision also outlines the procedures the Board must follow to issue a fine and the fine limits.
10.1-1309.1 Special orders; penalties	Provides the Board with the authority to issue special orders in compliance with the Administrative Process Act.
10.1-1310 Decision of Board pursuant to hearing	Requires the Board to provide a record of all decisions rendered by the Board. The record must contain the explicit findings of fact and conclusions of law.
10.1-1310.1 Notification of local government	Requires the Board to notify the Chief Administrative Officer of a violation of this chapter or regulation promulgated under this chapter.
10.1-1311 Penalties for noncompliance; judicial review	Provides the Board authority to promulgate regulations that determine the penalty amounts for noncompliance.
10.1-1312 Air pollution control districts	Provides the Board authority to establish local air pollution control districts. The provision also sets forth the powers and authorities of each air pollution control district.
10.1-1313 State Advisory Board on Air Pollution	Provides the Board authority to name persons to the State Advisory Board on Air Pollution.
10.1-1314 Owners to furnish plans, specifications and information	Provides the Board authority to request plans, specifications, and information from air pollution source owners.
10.1-1314.1 Protection of trade secrets	Requires the Board to keep confidential all information, except emissions data, reported to them.
10.1-1315 Right of entry	Provides the Board with authority to enter any establishment to obtain information, conduct surveys, or conduct an investigation.
10.1-1316 Enforcement and civil penalties	Sets forth the Board's responsibilities to issue penalties and enumerates the penalty amounts.
10.1-1316.1 Severe ozone nonattainment areas; fees	Requires any owner of a stationary source that emits above the enumerated limit in a severe nonattainment area to pay a fee to the Department. Sets forth the criteria to assess the fee.

10.1-1317 Judicial review of regulations of Board	Establishes judicial review to determine regulation validity.
10.1-1318 Appeal from decision of Board	Describes how to appeal a decision of the Board.
10.1-1319 Appeal to Court of Appeals	Establishes appeal process.
10.1-1320 Penalties; chapter not to affect right to relief or to maintain action	Sets forth penalties for violations.
10.1-1320.1 Duty of attorney for the Commonwealth	Creates duty for every attorney who receives notification of a violation from the Director to prosecute the violation.
10.1-1321 Local ordinances	Mandates the Board's approval of any ordinance relating to air pollution.
10.1-1321.1 When application for permit considered complete	Sets forth criteria for permit application.
10.1-1322 Permits	Sets forth permit criteria, fees, and fee amount caps. The provision also requires the Board to take into account permit fees charged in other states when assessing permit amounts.
10.1-1322.1 Air Pollution Permit Program Fund established; use of moneys	Establishes an Air Pollution Permit Program Fund and sets forth protocol for the Fund.
10.1-1322.2 Preliminary program permit fees	Describes preliminary program fees, who should pay such fees, and how the fees should be used by the agency.
10.1-1322.3 Emissions trading programs; emissions credits; Board to promulgate regulations	Provides the Board authority to promulgate regulations to provide for emissions trading programs to achieve and maintain the National Ambient Air Quality Standards. The regulations shall create an air emissions banking and trading program for the Commonwealth.
10.1-1322.4 Permit modifications for alternative fuels or raw materials	Stipulates that the Board may not require additional permits or permit modifications for alternative fuels so long as the owner fulfills specified criteria.
10.1-1323 Small business stationary source technical and environmental compliance assistance program.	Creates a small business stationary source technical and environmental compliance assistance program. Sets forth eligibility criteria.
10.1-1324 Office of Small Business Ombudsman created	Creates Office of Small Business Ombudsman and details Ombudsman's role and duties.
10.1-1325 Small Business Environmental Compliance Advisory Panel created; membership; terms; compensation and expenses.	Establishes Small Business Environmental Compliance Advisory Panel. Sets forth membership terms, compensation and expenses.
10.1-1326 Duties of the Advisory Board	Details duties of Advisory Board.
10.1-1327 Definitions.	Defines 4 terms for the purpose of applying this statute.

10.1-1328 Emissions rates and limitations.	Requires Board to adopt regulations that comply with emissions established by the EPA in its Clean Air Interstate Rule.
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